



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENSING BRANCH
IN THE MATTER OF**

A hearing pursuant to Section 20 of

The Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Licensee:	633593 B.C. Ltd. dba The Beagle Pub 301 Cook Street Victoria, BC V8V 3X5
Case:	EH08-139
For the Licensee:	Bart Reed
For the Branch:	Olubode Fagbamiye
Enforcement Hearing Adjudicator:	Edward Owsianski
Date of Hearing:	March 10, 2009
Place of Hearing:	Victoria, BC
Date of Decision	March 30, 2009

**Ministry of Housing
& Social
Development**

Liquor Control and
Licensing Branch

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INTRODUCTION

Corporate licensee 633539 B.C. Ltd. operates The Beagle Pub located in Victoria, BC. The licensee holds Liquor Primary Licence No. 137823. The hours of sale are 11:00 a.m. to 11:00 p.m. seven days a week. The patron capacity is 65 in area 1 and 20 on the patio. The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication '*Guide for Liquor Licensees in British Columbia*'.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The branch's allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated January 14, 2009. The branch alleges that on December 19, 2008, the licensee contravened section 12 of the *Liquor Control and Licensing Act* and section 71(2)(b) of the *Regulations* by permitting more patrons in the licensed establishment than the patron capacity set by the general manager, and the number of persons in the licensed establishment exceeded the occupant load.

The proposed penalty is \$5000 (item 15 of Schedule 4, *Liquor Control and Licensing Regulation*).

Item 15 of Schedule 4 of the *Regulation* provides a range of penalties for a first contravention of this type of a license suspension for 4 - 7 days and/or a monetary penalty of \$5,000.00 - \$7,000.00.

The license does not dispute that the contravention took place. However, the licensee does dispute that the proposed penalty is warranted.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act

[RSBC 1996] CHAPTER 267**Licences**

12 (1) The general manager, having regard for the public interest, may, on application, issue a licence for the sale of liquor.

(2) The general manager may, in respect of any licence that is being or has been issued, impose, in the public interest, terms and conditions

(a) that vary the terms and conditions to which the licence is subject under the regulations, or

(b) that are in addition to those referred to in paragraph (a).

(3) Without limiting subsection (2), the terms and conditions referred to in that subsection may

(a) limit the type of liquor to be offered for sale,

(b) designate the areas of an establishment, both indoor and outdoor, where liquor may be sold and served,

(c) limit the days and hours that an establishment is permitted to be open for the sale of liquor,

(d) designate the areas within an establishment where minors are permitted,

(e) approve, prohibit or restrict games and entertainment in an establishment,

(f) exempt a class or category of licensee from requirements with respect to serving food and non-alcoholic beverages in an establishment,

(g) vary seating requirements in the dining area of an establishment,

(h) vary requirements with respect to the location of an establishment,

- (i) exempt a class of licensee from requirements with respect to marine facilities where liquor is sold,
- (j) specify the manner in which sponsorship by a liquor manufacturer or an agent under section 52 may be conducted and place restrictions on the types of events, activities or organizations that may be sponsored,
- (k) specify requirements for reporting and record keeping, and
- (l) control signs used in or for an establishment.

(4) Nothing in subsection (2) or (3) authorizes the general manager to impose terms and conditions that are inconsistent with this Act or the regulations.

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

71(2) The following apply to a licence converted under subsection (1) unless and until rescinded or amended by the general manager:

- (a) the terms and conditions imposed on the licence by the general manager under section 12 and 12.1 of the Act in effect immediately before December 2, 2002;
- (b) the hours of liquor service and the patron or person capacity of the licensed establishment in effect immediately before December 2, 2002;
- (c) endorsements on the licence in effect immediately before December 2, 2002, except an endorsement on a winery licence for a consumption area.

ISSUES

1. Did the contravention occur?
2. If so, is a penalty appropriate and what is a reasonable penalty?

EXHIBITS

The following exhibits were presented:

- Exhibit 1** Branch Book of Documents #1, tabs 1 – 16.
- Exhibit 2** Package of documents titled “Development Permit Application Package”.
- Exhibit 3** Book of documents titled, “Parking Demand Study for The Beagle Pub”.

EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH

A branch liquor inspector testified that he is responsible for the geographical area in which the pub is located. The liquor license allows a maximum capacity of 65 patrons in the main area and 20 on the patio (exhibit 1, tab 3). It is subject to the terms and conditions found in the branch publication known as the *Guide* (exhibit 1, tab 12). The occupant load is 70 persons (exhibit 1, tab 6).

On the night of Friday, December 19, 2008 he was making routine inspections of licensed establishments in the Victoria area. He arrived at The Beagle Pub at approximately 9:30 p.m. and observed through the large front windows that it was quite busy inside and may be overcrowded. He entered through the front door, there was no door control person on duty. He counted 90 patrons inside the main area, this did not include staff on duty. He spoke to the manager who told him that he was not sure of the patron capacity for the pub and was not sure whether it was overcrowded. He was unable to produce the floor plan for the pub as it was locked in the upstairs office. The inspector suggested that the manager conduct his own count while the inspector made a second count. The inspector counted 94 patrons, the manager said that he counted 80 patrons then stopped counting the remainder. The inspector testified that while he was at the pub there were a few patrons coming and going but no mass entry or exit by

patrons which would affect the accuracy of his count. He advised the manager that the number of patrons must be reduced to the maximum allowed and that he would return in approximately 10 minutes to observe whether it had been done.

Returning approximately 15 minutes later he observed that a staff member had been assigned to the front door and was prohibiting persons from entering. Identifying himself he entered into the pub and conducted a count, 95 patrons in the main area. The manager said that he was doing his best to reduce the numbers but it was difficult. The inspector advised him that he must reduce the number to the licensed capacity. He requested that the manager protect the surveillance video and that he would pick it up on the following Monday. He left the establishment at approximately 10:13 p.m.

The inspector followed up with a letter to the licensee dated December 23rd requesting the video surveillance video and a list of employees working the night of December 19th (exhibit 1, tab 10). He was later advised that there were seven employees plus kitchen staff working at the pub at the time of the alleged contravention and that the video surveillance tapes for the night December 19th were not available as they had been over taped by the video system.

The inspector reviewed the branch file for the establishment. In his testimony he referred to copies of documents from the Branch file:

- Exhibit 1, tab 5; Inspection Interview Information sheet dated October 24, 2002 completed by the then area liquor inspector indicating that he discussed the licensee's responsibilities with the principals of the corporate licensee.
- Exhibit 1, tab 9; Compliance meeting held by the then area liquor inspector to discuss a complaint received concerning the operation of the establishment.
- Exhibit 1, tab 2; CN issued for overcrowding on December 19, 2008.
- Exhibit 1, tab 1; Notice of Enforcement Action dated January 14, 2009 completed by the inspector. Appendix B, "Licensee's Compliance History" indicates that there have been two previous contraventions for overcrowding occurring on June 7, 2004 and April 27, 2007 for which four day license suspensions were imposed.

The inspector recommended a monetary penalty of \$5,000.00 for the contravention of December 19, 2008.

EVIDENCE - THE LICENSEE

Bart Reed testified that he is a principal of the corporate licensee. He was not present the night of December 19th. The manager was in charge of the pub. The manager is aware of the licensed capacity and has a key to the office to access any needed documentation. He believes that the manager was intimidated by the inspector and failed to respond appropriately. Fifteen minutes is not sufficient to remove approximately 30 patrons in an orderly manner. The incident occurred on Friday night but was not brought to his attention until the following Monday. He was not aware that the inspector had requested the surveillance videos consequently they were automatically over taped by the video system.

He testified that since the last overcrowding contravention occurring in April 2007 they have attempted to increase the licensed capacity. It is not a simple process and involves both the branch and the City of Victoria. It has involved making renovations to the establishment, having new floor plans drawn and undertaking a parking study. Neighbourhood residents were invited to a meeting to outline the pub's proposal. Few attended, those that did indicated their support. Many persons living in the area have signed a petition of support. The process has been expensive and time consuming.

SUBMISSIONS – Licensee

The licensee submitted that the pub cannot operate successfully at the current capacity. The licensee is aware of the issue and is doing what it can deal with it. Much time and money have been invested in increasing the capacity to that of similar establishments. A penalty will only serve to increase the costs.

REASONS AND DECISION

The licensee has admitted the contravention. Having considered all of the evidence, I find that on December 19, 2008, the licensee contravened section 12 of the *Liquor Control and Licensing Act* and section 71(2)(b) of the *Regulations* by permitting more patrons in the licensed establishment than the patron capacity set by the general manager, and the number of persons in the licensed establishment exceeded the occupant load.

DUE DILIGENCE

The licensee is entitled to a defence to the allegations of the contraventions, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions from occurring. The licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems dealt with.

Here, there is little evidence upon which I can find that the licensee was duly diligent. At the time of the contravention the manager was in charge of the establishment. He was, in a strict legal sense, the directing mind of the licensee. He knew or ought to have known the maximum licensed capacity and building occupant load for the establishment. The overcrowding was obvious. No action was being taken to restrict entry by patrons or to reduce the number of patrons inside.

I find that the licensee has not been duly diligent.

PENALTY

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulations* and/or the terms and conditions of the licence, I have discretion to order one or more of the following enforcement actions:

- impose a suspension of the liquor licence for a period of time
- cancel a liquor licence
- impose terms and conditions to a license or rescind or amend existing terms and conditions
- impose a monetary penalty
- order a licensee to transfer a license

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulations*. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so, and I am not bound to order the penalty proposed in the NOEA.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is: whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to public safety and the well being of the community.

There is no previous proven contravention of the same type for this licensee within the year preceding this incident. Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, Section 1(1)(b), the branch has treated the allegation as a first contravention. The range for first contraventions of this type is a license suspension for 4 - 7 days and/or a monetary penalty of \$5,000.00 - \$7,000.00.

The branch's primary goal in bringing enforcement action is to achieve voluntary compliance. Overcrowding is a continuing problem at this establishment. The licensee did not put sufficient measures in place to prevent the recurrence of the contravention. The general manager of the branch has a duty to supervise the conduct and operation of licensed establishments.

In the circumstances of this case I am satisfied that the licensee has not successfully or sufficiently stressed upon its employees the need to fully and conscientiously carry out their duties and a penalty is necessary to ensure future compliance.

Any penalty imposed must be sufficient to ensure compliance in the future. In the circumstances I find that a monetary penalty is necessary to encourage future voluntary compliance. A \$5,000.00 monetary penalty is necessary, appropriate and reasonable.

ORDER

Pursuant to Section 20 (2) of the *Act*, I order the payment of a five thousand dollar (\$5,000) monetary penalty by the licensee to the general manager on or before Thursday, April 30, 2009.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: March 30, 2009

cc: City of Victoria Police

Liquor Control and Licensing Branch, Victoria Office
Attn: Gary Barker, Regional Manager

Liquor Control and Licensing Branch, Victoria Office
Attn: Olubode Fagbamiye, Branch Advocate